

1 LAW OFFICES OF
2 **WALKUP, MELODIA, KELLY, WECHT & SCHOENBERGER**
3 A PROFESSIONAL CORPORATION

4 650 CALIFORNIA STREET, 26TH FLOOR
5 SAN FRANCISCO, CALIFORNIA 94108-2615
6 (415) 981-7210

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8 KHALDOUN A. BAGHDADI (State Bar #190111)
9 **ATTORNEY FOR PLAINTIFF**

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12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA

14 AUDREY EICHORN,
15 Plaintiff,
16 v.
17 CITY AND COUNTY OF SAN FRANCISCO,
18 LUIS R. RIVAS, individually and in his official
19 capacity, and DOES 1-30, Jointly and Severally,
20 Defendants.

21 Case No.

22 **COMPLAINT FOR DAMAGES**

1. 42 U.S.C. §§ 1983 and 1988
2. California Civil Rights Violations
3. California Common Law
(Assault; Battery; Negligence)

23 **DEMAND FOR JURY TRIAL**

24 **JURISDICTION**

25 1. This civil rights action stems from the excessive use of force and detention of
26 plaintiff Audrey Eichorn (“Ms. Eichorn”) on July 1, 2002, at the Barnett-Briggs Medical Library
27 of San Francisco General Hospital (“SFGH”). This action is brought pursuant to 42 USC §§ 1983
28 and 1988, and the Fourth and Fourteenth Amendments to the United States Constitution.
Jurisdiction is premised upon 28 USC §§ 1331 and 1343(a)(3) and (4). Plaintiff further invokes
the supplemental jurisdiction of this Court pursuant to 28 USC § 1367 to hear and decide claims
arising under state law.

2. The amount in controversy herein, excluding interest and costs, exceeds the
minimum jurisdictional limit of this Court.

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VENUE AND INTRADISTRICT ASSIGNMENT

3. This is the proper Court for commencing this action, as plaintiff resides within the jurisdictional boundaries of the Northern District of California. (28 U.S.C. § 1402 (a)(1)). As a second basis for venue, all relevant acts or omissions occurred within this district. (28 U.S.C. § 1402 (b)). Because this action arises in the County of San Francisco, assignment to the San Francisco or Oakland division of this Court is proper pursuant to Civil Local Rule 3-2(d).

PARTIES AND PROCEDURE

4. At all times herein mentioned, plaintiff Audrey Eichorn was and is a resident of the County of San Francisco, State of California.

5. Defendant City and County of San Francisco is a municipal government entity established by the laws and constitution of the State of California. At all relevant times herein, said defendant owned, operated, managed, directed, and controlled SFGH, the San Francisco County Sheriff's Department, and the San Francisco Institutional Police Department.

6. Plaintiff is informed and believes, and alleges upon said information and belief that at all relevant times herein, defendant Luis Rivas was an individual employed as a law enforcement officer by the defendant City and County of San Francisco, and served in that capacity at SFGH, the San Francisco County Sheriff's Department, and the San Francisco Institutional Police Department. At all times alleged herein, defendant Rivas was acting within the course and scope of his employment as a law enforcement officer.

7. Defendant Rivas is sued individually and in his official capacity, and at all material times, each defendant herein acted under color of law.

8. The true names and capacities of defendants sued herein as Does 1-30 ("Doe defendants") are presently unknown to plaintiff, who therefore sues said Doe defendants by such fictitious names, and plaintiff will seek leave to amend this complaint to show their true names and capacities when the same are ascertained. Plaintiff is informed and believes and thereon alleges that each of the defendants sued herein was negligently, wrongfully, and otherwise responsible in some manner for the events and happenings as hereinafter described, and proximately caused injuries and damages to plaintiff. Further, one or more Doe defendants was at

1 all material times responsible for the hiring, training, supervision, control, and discipline of
 2 defendant Rivas.

3 9. Plaintiff is informed and believes, and thereon alleges, that each defendant herein
 4 was an agent, servant, employee, partner, joint venturer, co-conspirator, and/or alter ego of the
 5 remaining defendants, and in doing the things herein alleged, was acting within the course and
 6 scope of that relationship.

7 10. Plaintiff is further informed and believes, and thereon alleges, that each of the
 8 defendants herein gave consent, aid, and assistance to each of the remaining defendants, and
 9 ratified and/or authorized the acts or omissions of each defendant as alleged herein, except as may
 10 be hereinafter otherwise specifically alleged. At all material times, each defendant was jointly
 11 engaged in tortious and unconstitutional activity, resulting in the deprivation of plaintiff's civil
 12 rights and other harm.

13 11. At all material times, defendant Rivas acted pursuant to the actual customs,
 14 policies, practices and procedures of the City and County of San Francisco, SFGH, the San
 15 Francisco Sheriff's Department, and the San Francisco Institutional Police.

16 **GENERAL ALLEGATIONS**

17 12. Plaintiff hereby realleges and incorporates by this reference each and every
 18 paragraph in this complaint as if fully set forth herein.

19 13. On July 1, 2002, Ms. Eichorn presented to the pharmacy of SFGH to fill a
 20 prescription. While Ms. Eichorn waited for her prescription to be filled, she entered the Patient
 21 Education Resource Center of SFGH, and started using one of the computer terminals to access
 22 the internet.

23 14. At all material times, the Patient Education Resource Center of SFGH was open to
 24 the public.

25 15. Shortly thereafter, Ms. Julia Haugen, an employee of SFGH and the City and
 26 County of San Francisco, approached Ms. Eichorn and asked her to identify herself. When Ms.
 27 Eichorn informed her that she was waiting for a prescription, Ms. Haugen told Ms. Eichorn to use
 28 the public library, and then left the room.

1 16. A few moments after Ms. Haugen left the room, she returned with defendant Luis
 2 Rivas. Defendant Rivas told Ms. Eichorn that she could not use the computer terminal, and asked
 3 that she leave the premises.

4 17. When Ms. Eichorn asked for further explanation as to why she could not use the
 5 computer terminal, defendant Rivas grabbed her right arm, and pulled her out of her chair.
 6 Defendant Rivas then employed a submission hold, and forced Ms. Eichorn's arm behind her back
 7 by pulling forcibly on her thumb. Defendant Rivas then forcibly brought Ms. Eichorn to the floor,
 8 and placed her in handcuffs.

9 18. Shortly thereafter, defendant Rivas employed the handcuffs to lift Ms. Eichorn to
 10 her feet. He then led her out of the Patient Education Resource Center and through the main lobby
 11 of SFGH.

12 19. At all times above alleged, Ms. Eichorn was behaving peacefully and did not
 13 threaten defendant Rivas or any other person. The seizure, arrest and detention of Ms. Eichorn
 14 was without warrant, probable cause, reasonable suspicion, or other legal right.

15 20. At all material times, the acts and omissions of defendant Rivas were intentional,
 16 wanton and/or willful, conscience shocking, reckless, malicious, deliberately indifferent to Ms.
 17 Eichorn's rights.

18 21. Plaintiff filed a timely government claim pursuant to California Government Code
 19 section 910 et seq., with defendant City and County of San Francisco. Said claim was denied on
 20 December 18, 2002. This complaint is thus timely filed pursuant to the applicable provisions of
 21 the California Government Code.

22 22. As a direct, legal and proximate result of each defendant's acts and/or omissions as
 23 set forth above, Ms. Eichorn sustained the following injuries and damages, which included:

- 24 a. A broken thumb, cracked rib, strained rotator cuff and severe damage to the
 musculature of her neck and back;
- 25 b. pain, suffering, and emotional distress;
- 26 c. hospital and medical expenses;
- 27 d. lost wages and earning capacity;

- e. impairment of the normal enjoyment of life;
- f. violation of constitutional rights;
- g. all damages and penalties recoverable under 42 USC §§ 1983 and 1988, Cal. Civ. Code §§ 51.7 et seq., 52 et seq., and 52.1 et seq., and as otherwise allowed under California and United States statutes, codes, and common law.

23. Defendants subjected plaintiff to their wrongful conduct, depriving her of rights described herein, knowingly, maliciously, and with conscious and reckless disregard for whether the rights and safety of plaintiff and others would be violated by their acts and/or omissions.

24. The conduct of defendant Rivas entitles plaintiff to punitive damages and penalties allowable under 42 USC § 1983 and California law.

25. Plaintiff is also entitled to reasonable costs and attorney fees from all defendants under 42 USC § 1988 and applicable California codes and laws.

FIRST CAUSE OF ACTION

-- 42 USC § 1983 --

ALL DEFENDANTS EXCEPT CITY AND COUNTY OF SAN FRANCISCO

26. Plaintiff hereby realleges and incorporates by this reference each and every paragraph in this complaint as if fully set forth herein.

27. By engaging in the acts and omissions described above, the defendants violated 42 USC § 1983, depriving Ms. Eichorn of her clearly-established constitutional rights protected by the First, Fourth and Fourteenth Amendments to U.S. Constitution. Said rights included, but were not limited to:

- a. The right to speak freely as secured by the First Amendment;
- b. The right to be free from unreasonable searches and seizures as secured by the Fourth and Fourteenth Amendments;
- c. The right to be free from excessive and unreasonable force in the course of a seizure as secured by the Fourth and Fourteenth Amendments;

d. The right to be free from the deprivation of life, liberty and property without due process of law as secured by the Fourteenth Amendment.

28. As a direct, legal and proximate result of defendants' acts and/or omissions as set forth above, plaintiff sustained the injuries and damages alleged in paragraphs 22 through 25 of this complaint, and is entitled to relief as set forth below.

**SECOND CAUSE OF ACTION
- 42 USC § 1983 -**

DEFENDANTS CITY AND COUNTY OF SAN FRANCISCO AND DOES 1-30

29. Plaintiff hereby realleges and incorporates by this reference each and every paragraph in this complaint as if fully set forth herein.

30. The unconstitutional actions and/or omissions of defendants Rivas and Does 1-30, as well as other officers employed by or acting on behalf of defendant City and County of San Francisco were pursuant to the customs, policies, practices, and/or procedures of defendant City and County of San Francisco to use or tolerate the use of excessive and/or unjustified force, and to detain and/or arrest persons without warrant, probable cause, or legal right.

31. In addition, the above-alleged practices were directed, encouraged, and/or ratified by the highest acting policy making officers for the San Francisco Sheriff's Department, the San Francisco General Hospital, and the San Francisco Institutional Police Department.

32. Defendants failed to properly train, instruct, monitor, supervise, and discipline defendants Rivas and other Doe defendants, with deliberate indifference to Ms. Eichorn's constitutional rights, which were thereby violated as alleged above.

33. The unconstitutional actions and/or omissions of defendants Rivas and other Doe defendants, as described above, were ordered, approved, tolerated and ratified by the highest acting policy making officers, including some Doe defendants, for the City of San Francisco, the San Francisco Sheriff's Department, the San Francisco General Hospital, and the San Francisco Institutional Police Department.

34. The aforementioned customs, policies, practices, and procedures, as well as the failures to properly and adequately train, instruct, monitor, supervise and discipline of defendants City and County of San Francisco and Does 1-30 were a moving force and/or a proximate and

1 legal cause of the deprivations of plaintiff's clearly-established and well-settled constitutional
 2 rights in violation of 42 USC § 1983.

3 35. As a direct, legal and proximate result of defendants' acts and/or omissions as set
 4 forth above, plaintiff sustained the injuries and damages alleged in paragraphs 22 through 25 of
 5 this complaint, and is entitled to relief as set forth below.

6 **THIRD CAUSE OF ACTION**
 7 **-- VIOLATION OF CIVIL CODE § 52.1 --**
ALL DEFENDANTS

8 36. Plaintiff hereby realleges and incorporates by this reference each and every
 9 paragraph in this complaint as if fully set forth herein.

10 37. By their acts, omissions, customs, and policies, each defendant acting in concert, as
 11 described above, violated Ms. Eichorn's rights under California Civil Code § 52.1, and the
 12 following clearly-established rights under the United States Constitution and the California
 13 Constitution:

- 14 a. The right to speak freely as secured by the First Amendment;
- 15 b. The right to be free from unreasonable searches and seizures as secured by
 the Fourth and Fourteenth Amendments to the U.S. Constitution;
- 16 c. The right to be free from excessive and unreasonable force in the course of
 a seizure as secured by the Fourth and Fourteenth Amendments to the U.S.
 Constitution;
- 17 d. The right to be free from the deprivation of life, liberty and property
 without due process of law as secured by the Fourteenth Amendment to the
 U.S. Constitution;
- 18 e. The right to enjoy and defend life and liberty, acquire, possess and protect
 property, and pursue and obtain safety, happiness and privacy, as secured
 by the California Constitution, Article 1, Section 1;
- 19 f. The right to life, liberty and property and not to be deprived of those
 without due process of law as secured by the California Constitution,
 Article 1, Section 7;

g. The right to be free from unlawful and unreasonable seizure of one's person as secured by the California Constitution, Article 1, Section 13;

h. The right to be free from unreasonable or excessive force, as secured by the California Constitution, Article 1, Section 13;

5 38. As a direct, legal and proximate result of these violations of California Civil Code §
6 52.1 and of her rights under the United States and California Constitutions, Ms. Eichorn sustained
7 the injuries and damages alleged in paragraphs 22 through 25 of this complaint, and is entitled to
8 all damages allowed by California Civil Code §§ 52, 52.1, as well as those damages sought below.

**FOURTH CAUSE OF ACTION
-- VIOLATION OF CALIFORNIA CIVIL CODE § 51.7 --
ALL DEFENDANTS**

2 39. Plaintiff hereby realleges and incorporates by this reference each and every
3 paragraph in this complaint as if fully set forth herein.

4 40. By their acts, omissions, customs, and policies, each defendant acting in concert, as
5 described above, violated Ms. Eichorn's rights secured by California Civil Code § 51.7 to be free
6 from any violence, or intimidation by threat of violence, committed against her person or property
7 because of her gender and/or political affiliation.

18 41. As a direct, legal and proximate result of defendants' acts and/or omissions as set
19 forth above, plaintiff sustained the injuries and damages alleged in paragraphs 22 through 25 of
20 this complaint, and is entitled to relief as set forth below.

**FIFTH CAUSE OF ACTION
-- NEGLIGENCE; PERSONAL INJURIES --
ALL DEFENDANTS**

23 42. Plaintiff hereby realleges and incorporates by this reference each and every
24 paragraph in this complaint as if fully set forth herein.

25 43. At all times, each defendants owed Ms. Eichorn the duty to act with reasonable and
26 due care in the execution and enforcement of any right, law, or legal obligation.

27 44. These duties of reasonable care owed Ms. Eichorn included, but were not limited to
28 the duty to refrain from using excessive and/or unreasonable force against citizens.

45. These general duties of reasonable care and due care owed to plaintiff by also included the duty to properly and adequately hire, investigate, train, supervise, monitor and discipline their employees, agents, and/or law enforcement officers.

46. Defendants, through their acts and omissions, breached each and every one of the above alleged duties owed to Ms. Eichorn. The acts and omissions which breached said duties included the conduct of their employees Julia Haugen and defendant Luis Rivas.

47. As a direct, legal and proximate result of defendants' acts and/or omissions as set forth above, plaintiff sustained the injuries and damages alleged in paragraphs 22 through 25 of this complaint, and is entitled to relief as set forth below.

**SIXTH CAUSE OF ACTION
-- ASSAULT AND BATTERY --
ALL DEFENDANTS**

48. Plaintiff hereby realleges and incorporates by this reference each and every paragraph in this complaint as if fully set forth herein.

49. The actions and omissions of defendants as set forth above constitute assault and battery as that term is used in California common law.

50. As a direct, legal and proximate result of defendants' acts and/or omissions as set forth above, plaintiff sustained the injuries and damages alleged in paragraphs 22 through 25 of this complaint, and is entitled to relief as set forth below.

WHEREFORE, plaintiff prays for judgment against defendants herein, jointly and severally for:

- a. compensatory and exemplary damages, including all civil penalties allowed under federal and California law, in an amount according to proof and which is fair, just and reasonable;
- b. punitive damages as allowed under 42 USC § 1983 and California law in an amount according to proof and which is fair, just, and reasonable;
- c. all other damages, penalties, costs, interest, and attorney fees as allowed by 42 USC §§ 1983 and 1988, Cal. Civil Code §§ 51.7 et seq., 52 et seq., 52.1

1 et seq., and Cal. Code of Civ. Proc. § 1021, and as otherwise allowed by
2 California and federal law;

3 d. such other and further relief as this Court may deem appropriate.

4 Dated: June 5, 2003

WALKUP, MELODIA, KELLY,
WECHT & SCHOENBERGER

7 KHALDOUN A. BAGHDADI
8 Attorney for Plaintiff

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10 **JURY DEMAND**

11 Plaintiff hereby requests a trial by jury.

12 Dated: June 5, 2003

WALKUP, MELODIA, KELLY,
WECHT & SCHOENBERGER

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15 KHALDOUN A. BAGHDADI
16 Attorney for Plaintiff

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